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BY HAND

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Petition for Rulemaking of Scanlan Television, Inc.  
for Amendment of Section 73.606(b), Table of Allotments,  
Television Broadcast Stations (Marquette, Michigan)  
Reply to Opposition of Barry Shapiro

Dear Mr. Caton:

This letter is submitted on behalf of Scanlan Television, Inc. ("Scanlan") in response to the letter of opposition filed by Barry Shapiro ("Shapiro"), one of six competing applicants for a new television station on Channel 19 in Marquette, Michigan. Shapiro's decision to file a letter of opposition rather than submit his own request for a new channel is the best evidence that he has no *bona fide* interest in the prompt initiation of television service in Marquette. Moreover, the letter presents no new arguments, merely parroting the unconstructive and baseless attacks submitted by Mario Iacobelli in his opposition on August 7, 1996.<sup>1</sup> Scanlan's proposal remains the only viable solution to the mutual exclusivity, which drags on unabated as the viewers of Marquette continue to await their first competitive television service. Shapiro's filing makes clear that he is interested solely in obstruction and delay, and has no interest in prompt service to Marquette.

<sup>1</sup> Scanlan filed a Reply to Iacobelli's Opposition on August 22, 1996.

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William F. Caton  
September 13, 1996  
Page 2

The mutual exclusivity on Channel 19, which the FCC has no means to resolve since its discontinuation of the comparative hearing process, was created when five applicants filed applications competing with Scanlan's proposal to construct a television station in Marquette. In a petition filed on June 25, 1996, and served on each applicant for Channel 19, Scanlan proposed to resolve the mutually-exclusive applications by allocating a new channel in Marquette for each existing applicant expressing an interest in providing television service to this underserved area in the Upper Peninsula of Michigan. No such expressions of interest have been filed to date.

Shapiro's attacks on Scanlan's character -- accusing it of "flaunting" [sic], "skirting," and "flagrantly violating" FCC rules -- are misguided and unfounded. Scanlan, in contrast to the other Channel 19 applicants, is vitally interested in immediately commencing service to Marquette, and has offered creative solutions that will expedite the provision of a first competitive service to this underserved area. Scanlan's commitment to providing television service to this market is long-standing; ironically, Scanlan filed its Marquette application only after mutual exclusive applications deadlocked its proposal to construct a station on Channel 10 in nearby Ishpeming, for which it had filed a petition for rulemaking in 1993. Both Shapiro and Iacobelli complain that the Marquette application is "inconsistent" with this unresolved Ishpeming application. However, as Scanlan explained in its reply to Iacobelli's opposition, Scanlan consulted with the FCC staff before filing for Channel 19, and was assured that given the unresolvable mutual exclusivity in Ishpeming, an application in Marquette would not violate the Commission's rules. Scanlan has therefore violated no FCC rules or policies; it can be faulted only for being eager to initiate service in Marquette.

In contrast, Shapiro has not requested his own channel, or offered any alternative proposal to resolve the pending mutual exclusivity. Shapiro's opposition makes clear -- as does every other applicant's failure to request its own channel -- that Scanlan is the *only* applicant with a *bona fide* interest in promptly serving the viewers of Marquette.

Shapiro's attacks against the proposal are groundless, as well. First, Shapiro contends that allocating a new channel to Scanlan would "be grossly unfair to the other Channel 19 applicants" because it is unlikely that the other competing applicants would have the opportunity to apply for new channels due to the freeze imposed on petitions for new allotments. This argument, while convenient, is disingenuous. Scanlan's petition was filed on June 25, 1996, a full month before the freeze was imposed. *Neither Shapiro nor any other applicant requested its own channel* during that intervening month (or since), and therefore they cannot be heard to complain of "prejudice." The competing applicants have only their own lack of diligence (or interest) to blame if they are indeed precluded from requesting the allocation of new channels to Marquette.

Second, Shapiro alleges that the allocation of up to six new channels to Marquette would be contrary to the public interest. The Commission has consistently allowed the market to determine whether new channels are economically feasible, granting allocation requests in the

William F. Caton  
September 13, 1996  
Page 3

absence of technical impediments: "[T]here is no Commission requirement for [a petitioner] to demonstrate a 'demand' or need for an allotment aside from the already stated willingness [of the petitioner] to apply for the [] allotment."<sup>2</sup> In any event, given the silence of the other Marquette applicants, it is unlikely that the Commission would need to allocate more than one or two channels to Marquette meet the demand. Contrary to Shapiro's belief, the public interest *would* be served by any resolution of the mutual exclusivity that would expedite service to Marquette.

Scanlan stands apart from the other Channel 19 applicants in its steadfast willingness to promptly provide Marquette's second local television service. At present, the Commission has no mechanism other than Scanlan's allocation proposal to resolve the mutual exclusivity that is depriving the viewer's of Marquette of this valuable service. Meanwhile, the citizens of Marquette continue their wait for a first commercial competitive television service in their community. Accordingly, Scanlan's request for the allocation of a new channel to Marquette should be granted, as should any similar petition by a Channel 19 applicant. Scanlan hereby reaffirms its intention to amend its pending Channel 19 application to specify such a channel and to commence construction and operation as soon as practicable thereafter.

Sincerely,



Kevin C. Boyle  
Steven H. Schulman\*  
of LATHAM & WATKINS

cc: Tom Scanlan, Scanlan Television, Inc.

\*Admitted in Maryland Only  
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<sup>2</sup> *Amendment of Section 73.606(b), Table of Allotments, Television Broadcast Stations (Albion, Nebraska)*, 10 F.C.C. Rcd. 3183, 3184 (MMB 1995).

# CERTIFICATE OF SERVICE

I, Bonnie B. Farrish, a legal secretary with the law firm of Latham & Watkins, do hereby certify that a copy of the foregoing Reply to Opposition of Barry Shapiro was mailed, postage prepaid by first class mail, this 13th day of September, 1996, to the following:

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